



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-37
October 3, 2008

NOTIFICATION AND CONTENT REQUIREMENTS OF UNUSUAL AND COMPELLING URGENCY AUTHORITY

PURPOSE: This PN revises the NASA FAR Supplement (NFS) to require Contracting Officers to notify NASA Headquarters, Office of Procurement, Program Operations Division when the statutory authority of FAR 6.302-2, Unusual and Compelling Urgency (10 USC 2304(c)(2)), is used for a contract action. Notification is to be accomplished in a two-step process. The first step is to provide notification as soon as the requirement is known or the need is identified and prior to approval of the justification approval and award. The second step of the notification is accomplished by providing a copy of the justification within three (3) days after the justification is approved. In addition, this PN imposes specific content requirements in the justification supporting the use of the unusual and compelling urgency authority.

BACKGROUND: As a result of suggestions made by the Acquisition Advisory Panel, the Office of Federal Procurement Policy (OFPP) Administrator's memorandum of May 31, 2007 issued to Chief Acquisition Officers and Senior Procurement Executives, proposed several initiatives, including promoting and strengthening competition in Federal acquisition. Procurements resulting from emergencies have received heightened attention and scrutiny from the public and Government oversight organizations. One of OFPP's initiatives focuses on the use of the authority to make non-competitive awards in instances of unusual and compelling urgency, and limits the time period for use of this authority to the period of the compelling circumstances, not to exceed one year. Additionally, recent internal reviews of justifications indicate a lack of detail sufficient to support use of the authority. Monitoring the use of the authority will therefore permit NASA to oversee trends related to its use, and to ensure quality and consistency in the documentation.

ACQUISITIONS AFFECTED BY CHANGES: This requirement is applicable to all contract actions, using the statutory authority of FAR 6.302-2, issued after the effective date of this PN.

ACTION REQUIRED BY CONTRACTING OFFICERS: Advise all contracting personnel of the new requirement to provide copies to NASA Headquarters, Office of Procurement, Program Operations Division and ensure all data and rationale requirements are included in the justification documents.

CLAUSE CHANGES: None.

PARTS AFFECTED: Part 1806.

REPLACEMENT PAGES: You may use the enclosed pages to replace 6:3 through 6:6 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: These changes do not have a significant effect beyond the internal operating procedures of NASA and do not have a significant cost or administrative impact on contractors or offerors, and therefore do not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

HEADQUARTERS CONTACT: Marilyn J. Seppi, Contract Management Division; 202-358-0447, email: marilyn.seppi-1@nasa.gov.

//s//

William P. McNally
Assistant Administrator for Procurement

Enclosures

DISTRIBUTION LIST:
PN List

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date _____

NOTES:

1. Name of source to be excluded.
2. Description of estimated reduction in overall costs.
3. Description of how estimate was derived.
4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.
5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3--Other Than Full and Open Competition

1806.302 Circumstances permitting other than full and open competition.

1806.302-4 International agreement.

(c) Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition.

1806.302-7 Public interest.

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs. The Office of Procurement, Program Operations Division shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302-7(c)(1) in any format that clearly documents the determination and the supporting findings.

1806.303 Justifications.**1806.303-1 Requirements.**

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(c) The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302-7 to NASA Headquarters, Office of Procurement, Program Operations Division, unless one of the exceptions at FAR 25.401 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1.

(d) NASA Headquarters, Office of Procurement, Program Operations Division shall be notified of all actions citing the authority of FAR 6.302-2. Notification shall be accomplished in two steps. Step One: The contracting officer shall notify the cognizant analyst in Program Operations Division of actions requiring the use of an unusual and compelling urgency justification as soon as the requirement is determined or the need is identified. This written notice shall be emailed to the Program Operations Division analyst and shall provide a short summary of the purpose and need behind the justification and also provide the anticipated award date of the contractual action. The purpose of this notification is to initiate a telephone dialogue between the Center and HQ's Program Operations Division to discuss the need and the anticipated contracting approach. The Center shall be responsible for initiating this telephone dialogue with HQ to ensure receipt of the written notification. This notification shall be accomplished prior to approval of the justification and prior to award of the contractual action unless the urgent nature of the situation does not allow time to submit the notice. Step Two: The contracting officer shall send a copy of each approved justification or D&F that cites the authority of FAR 6.302-2 to NASA Headquarters, Office of Procurement, Program Operations Division's cognizant analyst within three days of its approval. Transmission of this copy can be by facsimile unless NASA Public Key Infrastructure (PKI) is determined necessary. The purpose of the notice is for informational, record and analysis purposes and will provide the Program Operations Division the opportunity to identify any systemic issues associated with the various justifications.

1806.303-170 Sole-source purchases by contractors.

The requirements of FAR Part 6 and NFS Part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified.

1806.303-2 Content.**1806.303-270 Use of unusual and compelling urgency authority.**

(a) When using the authority of FAR 6.302-2, the justification required in FAR 6.303 shall describe and provide rationale as to the extent and nature of the harm to the Government by:

quantifying the serious injury; estimating the cost and describing the basis for the estimate of the financial injury. If personal injury or loss of life or any other injury is probable, describe the circumstances behind this potential injury/loss and why no other action could avert these conditions. Include a chronological explanation of events that caused the urgent situation. The justification must also explain the extent to which competition is limited and describe the extent to which maximum practicable competition was obtained given the circumstances.

(b) If the authority at FAR 6.302-2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303-2 and;

(1) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together with a description of the circumstances that prevented award in a timely manner; and

(2) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304-70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR Subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over \$550,000 but not exceeding \$11,500,000 -

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over \$11,500,000 but not exceeding \$78,500,000 -

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Head of the contracting activity.

(c) For proposed contracts over \$78,500,000 -

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Head of the contracting activity.

(iv) Agency Competition Advocate

(2) Approving Official: Assistant Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Assistant Administrator for Procurement, the original justification shall be forwarded to the Assistant Administrator for Procurement, Office of Procurement, Program Operations Division.

(f) Regardless of dollar value, class justifications shall be approved by the Assistant Administrator for Procurement.

Subpart 1806.5--Competition Advocates

1806.501 Requirement.

(1) The Director, Program Operations Division, is the agency competition advocate, reporting to the Assistant Administrator for Procurement on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The executive officer for the Director of Headquarters Operations is the competition advocate for the Headquarters contracting activity.

1806.502 Duties and Responsibilities.

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.